

Exhibit 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION

4 NETLIST, INC., (CAUSE NO. 2:21-CV-463-JRG
5)
6 Plaintiff, ()
7 vs. ()
8 SAMSUNG ELECTRONICS CO., LTD., ()
9 et al.,) MARSHALL, TEXAS
10 () APRIL 21, 2023
11 Defendants.) 8:00 A.M.
12

13 VOLUME 6

14 TRIAL ON THE MERITS

15 BEFORE THE HONORABLE RODNEY GILSTRAP
16 UNITED STATES CHIEF DISTRICT JUDGE
17 and a jury

18 SHAWN McROBERTS, RMR, CRR

19 100 E. HOUSTON STREET

20 MARSHALL, TEXAS 75670

21 (903) 923-8546

22 shawn_mcroberts@txed.uscourts.gov

A P P E A R A N C E S

FOR THE PLAINTIFF: IRELL & MANELLA, LLP -
LOS ANGELES
1800 AVENUE OF THE STARS
SUITE 900
LOS ANGELES, CA 90067-4276
(310) 203-7096
BY: MR. JASON SHEASBY
MS. LISA GLASSER
MR. BEN MANZIN-MONNIN
MR. MICHAEL TEZYAN

IRELL & MANELLA -
NEWPORT BEACH
840 NEWPORT CENTER DRIVE
SUITE 400
NEWPORT BEACH, CA 92660
(949) 760-0991
BY: MR. STEPHEN PAYNE

MCKOOL SMITH, P.C. - MARSHALL
104 E. HOUSTON ST., SUITE 300
MARSHALL, TEXAS 75670
(903) 923-9000
BY: MR. SAM BAXTER
MS. JENNIFER TRUELOVE
MR. KEVIN BURGESS

FOR THE DEFENDANTS: FISH & RICHARDSON, PC -
WASHINGTON DC
1000 MAINE AVE. SW, SUITE 1000
WASHINGTON, D.C. 20024
(202) 783-5070
BY: MR. RUFFIN CORDELL
MR. MICHAEL MCKEON
MS. LAUREN DEGNAN

FISH & RICHARDSON, P.C. -
DALLAS
1717 MAIN STREET, SUITE 5000
DALLAS, TEXAS 75201
(214) 747-5070
BY: MR. MATTHEW COLVIN
MR. THOMAS REGER

1 GILLAM & SMITH, LLP
2 303 SOUTH WASHINGTON AVENUE
3 MARSHALL, TEXAS 75670
4 (903) 934-8450
5 BY: MS. MELISSA SMITH

6
7 OFFICIAL REPORTER: SHAWN M. McROBERTS, RMR, CRR
8 100 E. HOUSTON STREET
9 MARSHALL, TEXAS 75670
10 (903) 923-8546
11
12
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1 THE COURT: Be seated, please.

2 Counsel, before the Court proceeds to conduct the formal
3 charge conference, I will ask if the parties have items from
4 the list of pre-admitted exhibits that were used during
5 yesterday's portion of the trial that need to be read into the
6 record.

7 MS. TRUELOVE: Plaintiff does, Your Honor.

8 THE COURT: All right. Please proceed.

9 MS. TRUELOVE: Thank you, Your Honor.

10 Your Honor, Plaintiff Netlist used two exhibits during
11 examinations yesterday, PX 1787 and PX 44.

12 THE COURT: All right. Is there objection to that
13 rendition from the Plaintiff by the Defendants?

14 MR. REGER: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. REGER: Your Honor, we do have an objection to
17 PX 44. Mr. Sheasby went flying through a number of different
18 exhibits, didn't lay any foundation to many of them. More
19 importantly, we never saw this exhibit being used. We asked
20 the Plaintiff about where in the transcript they could point
21 to using this exhibit. They gave us a cite to the transcript,
22 and in that cite there is a reference to a Netlist
23 presentation. PX 44 is a Samsung presentation.

24 So we still don't know of any cite in the transcript that
25 supports entering this exhibit, Your Honor.

1 won't be able to get back up again. So I'm going to ask you
2 to -- to listen carefully to what he has to say. And what I
3 hope he does is to respond to what I've said. But if he says
4 something new, a little bell should go off: Why -- why didn't
5 he say that the first time?

6 The verdict form you have is pretty -- pretty
7 straightforward. But obviously we want you to find that the
8 patents in this case are not infringed, we want you to find
9 that the '918 and the '354 invalid, and that the '339 is also
10 invalid. And if you assess damages, we ask that you be
11 reasonable.

12 With that, again, thank you and we look forward to your
13 verdict.

14 THE COURT: Plaintiff may now present its final
15 closing argument to the jury. You have 19 minutes and three
16 seconds left, Mr. Sheasby. Would you like a warning on your
17 final argument?

18 MR. SHEASBY: Yes, Your Honor. Could I have a
19 warning when I've used 10 minutes -- a warning when I have 10
20 minutes left, a warning when I have five minutes left, and a
21 warning when I have one minute left, if you would.

22 THE COURT: I'll do my best.

23 MR. SHEASBY: Thank you so much, Your Honor.

24 THE COURT: You may proceed with your final closing
25 argument.

1 MR. SHEASBY: Can I have slide 1.132, please?

2 Counsel for Defendants asked where the invention story
3 was, that Netlist is nothing, that these are faked patents
4 created by patent attorneys.

5 The invention story is in Samsung's own documents. In
6 2019, 1756, a unique proprietary know-how that they wanted to
7 access. Two years before they launched their infringing DDR5,
8 they came to us and asked us how to design DDR5 on-module
9 power management. This is PX 586. They conceded that we're
10 the company that created the LRDIMM technology. Where is the
11 invention story? The invention story is admitted in Samsung's
12 own documents.

13 We're here for one reason and one reason only, and it's
14 admitted in the last line of 1756, because Samsung refuses to
15 and will not pay for its use and infringement of these
16 patents.

17 Patents are not pathetic. Mr. Milton is not a liar.
18 What was created here was coveted by Samsung.

19 Let's go to 1.7.

20 We are here because Samsung is violating the law. They
21 spoke about flying 7,000 miles or 6,000 miles. He flew 6,000
22 miles to tell us that they needed access to our patents and to
23 not say one explanation for why they don't infringe. It
24 doesn't matter what country you are from; in this country, you
25 follow the law.

1 The first issue I will discuss is infringement.

2 If I could have slide 16.

3 The idea that there is a debate about whether a converter
4 circuit exists in Samsung products was answered by Mr.
5 McAlexander on cross-examination. I said, Do these PMICs have
6 LDO converters? And he said, Yes. The idea that an LDO
7 circuit is not a converter circuit is a fiction of Samsung's
8 counsel. Mr. McAlexander admitted that a converter is a type
9 of circuit, and Mr. Lo admitted that an LDO is a converter
10 circuit. So did Samsung's engineers.

11 Now, you might ask yourself this question. Mr.
12 McAlexander is a fine engineer, and he's incredibly qualified.
13 How can Doctor Mangione-Smith and Mr. McAlexander disagree on
14 these issues that they do on which relates to the '506 [sic],
15 the -- the '918, and '054 and is the '339?

16 And there was actually an exchange, and it was late in
17 the day and you may have missed it, but I believe it's one of
18 the most crucial exchanges in the case.

19 Doctor Mangione-Smith looked at all the detailed source
20 code for the '918 and '054. Mr. McAlexander admitted under
21 oath that Samsung's attorneys did not give him the source
22 code. The source code in schematics are the critical issues
23 that define the operation of these chips.

24 This is not a referendum on Mr. McAlexander. He is a
25 fine engineer. This is a referendum on Samsung who has hired

1 They said and accused us of lying to the Patent Office,
2 of going back on our agreement with the Patent Office. Do you
3 think Judge Gilstrap would let us break our agreement with the
4 Patent Office?

5 This is what we said in the Patent Office. This design
6 on the right-hand side is not our invention. The evidence in
7 this case from the corporate representative and senior
8 engineer is that design on the right, that DRAM circuit, is
9 not used in Samsung's products. In fact, the president of the
10 company said it as well.

11 The reality is that, other than Samsung's lawyers,
12 there's only one witness in this case who says cheese is the
13 same as a grilled cheese sandwich. One of the most powerful
14 tools you have is common sense.

15 85.

16 The suggestion that there is electrical communication is,
17 once again, something only Samsung's attorneys could support.
18 Where there's no driver or receiver pair, there is no
19 electrical connection or communication.

20 And what did he admit? This is the only place there is
21 an electrical connection with a driver, and this is the only
22 place where data will be passed. All these other locations
23 are just flow-through. There is no data. This is JTX 0015 at
24 15.

25 I'd now like to turn to validity.

1 102, please.

2 Clear and convincing evidence is the standard. There's a
3 presumption because the Patent Office carefully examined these
4 patents. The law applies to everyone the same whether you're
5 120-person company or whether you're the largest semiconductor
6 manufacturer in the world and you spend \$19 billion and yet
7 need to come to us for help.

8 Samsung follows the law in using the continuation
9 process. They file continuation after continuation after
10 continuation in areas where they do innovate, which is cell
11 phones. And the suggestion that Mr. Milton acted
12 inappropriately, the suggestion that what was being done was
13 anything other than following the law, is outrageous. There
14 is one company in this courtroom today who has not followed
15 the law, and I will represent to you, ladies and gentlemen of
16 the jury, it is not Netlist.

17 The written description doesn't require there to be exact
18 words or figures. It requires any combination of information.
19 And written description in this case is clear. What we
20 created was an on-module power management system in which
21 there is flash so that it can stay alive and stay awake to
22 resurrect the memory module.

23 And he admitted--Mr. McAlexander--that that is exactly
24 what is disclosed in our patent at column 23, lines 1 through
25 27. If someone says, I don't know if this design of on-module

1 power management exists in the specification, read column 23,
2 lines 1 through 27, of the '918 Patent, and you will find it.

3 The idea that there is not -- that all of the flash needs
4 to be on the memory module itself contradicts column 27 at 41
5 through 58. Scott Milton admitted it. The non-volatile
6 storage, the flash, can be off module in some of our
7 embodiments. That's what we patented here.

8 Doctor Mangione-Smith testified to the same thing, and
9 Mr. McAlexander testified to the same thing. If someone says,
10 I don't know, I think all the flash has to be on-module, you
11 tell them to read 27:41 through 58 of the '918 Patent.

12 THE COURT: Five minutes remaining.

13 MR. SHEASBY: 143.

14 The last issue I will discuss is damages. Why was
15 Samsung's behavior this way? Why did Samsung never request a
16 license to our patents? They didn't want to pay a reasonable
17 royalty, but they needed to use the technology. They were
18 desperate for it. And you know why. Because they dominate
19 the market and they need to keep dominating the market.

20 The DDR5 patents have a 30-percent power benefit. And
21 the suggestion that speed doesn't matter, which was made by
22 Mr. Calandra, their corporate representative, if someone said
23 speed is not that big of a deal, you take them to JTX 41.

24 Take them to JTX 41. Speed is how they market these products,
25 and it's essential.

1 For the '339 Patent, Doctor Mangione-Smith said that they
2 would be able to sell half as few modules of LRDIMMs if they
3 didn't have our technology, a dramatic hit to their market
4 share.

5 As to HBM stacks, people say stacking is not important?
6 Go to JTX 27. Take them there, and you will read that higher
7 stacks are essential and crucial to the success of this
8 company. Why did they take our HBM technology? They were
9 behind SK hynix and they were desperate to catch up.

10 You will hear in the jury instructions that there is a
11 question about whether there is any non-infringing
12 alternatives that can be used. If I was a company that was
13 facing a verdict of \$400 million, I would bring someone who
14 would explain that there are non-infringing alternatives in
15 our technology is not that important. I just wouldn't rely on
16 my lawyer to say that.

17 Well, they did bring two experts, and neither of those
18 experts were able to identify a single non-infringing
19 alternative to our technology.

20 Why are Samsung's silent patents important? Samsung
21 doesn't have patents that are alternatives to our technology.
22 And if they did, they would present them. And that is why our
23 technology is so valuable.

24 Samsung's 12,000 patents tells you the incredible value
25 of this technology, \$19 billion a year and yet no alternative.

1 If we can go to slide --

2 The second factor that you consider is the Rambus
3 agreement. The offhanded show that the Rambus agreement is
4 irrelevant, the Rambus agreement is essentially identical to
5 the dispute in this case. A business agreement that was
6 terminated, Samsung lost its rights, Rambus asserted patents
7 against Samsung, Netlist asserted patents against Samsung, and
8 you see that Netlist's damages are lower than Rambus received.
9 It's a powerful tool that suggests the consistency of our
10 position.

11 Credibility is important. At the beginning of this case
12 Samsung said we're going to say -- we're going to tell you
13 that one thing is clear, it will be less than 8 million. Then
14 the evidence came in, and Mr. Meyer said, oh, well, maybe it's
15 \$19.3 million. The fact that they can't even get their story
16 straight, the fact that their expert is so malleable that it
17 will change positions for some strategic reason, tells you
18 about the credibility of his testimony.

19 If we can go to slide 152.

20 The SK hynix agreement. The SK hynix agreement was
21 signed after we were no longer able to obtain supply pursuant
22 to the supply agreement with Samsung, and that agreement has
23 been a lifeline for this company. It's going to net us over
24 \$450 million in revenue. Samsung says SK hynix is a
25 comparable agreement? It's going to net us \$450 million in

1 because I would like to shake each one of your hands, I'd like
2 to look each one of you in the eye and tell you personally how
3 much the Court appreciates your service as jurors.

4 What you have done is very real and important public
5 service, and it warrants that kind of personal thanks and
6 personal attention. And I know it's Friday and I know it's
7 afternoon and you've been very patient and very diligent
8 throughout your time as jurors and I will not hold you, but if
9 you would give me just a minute or two to come in and thank
10 you personally before you leave, I would certainly consider it
11 an honor.

With that, ladies and gentlemen, that completes the trial of the case, the Court has accepted the jury's unanimous verdict, I have released you as jurors, and the jury is excused.

(Whereupon, the jury left the courtroom.)

17 THE COURT: Counsel, that completes the trial of
18 this case. You are excused.

19 (The proceedings were concluded at 2:45 p.m.)

1 I HEREBY CERTIFY THAT THE FOREGOING IS A
2 CORRECT TRANSCRIPT FROM THE RECORD OF
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE
6 COURT AND THE JUDICIAL CONFERENCE OF THE
7 UNITED STATES.

8

9 S/Shawn McRoberts

04/21/2023

10 _____ DATE _____.
11 SHAWN McROBERTS, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER

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